

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY

3 NXIVM CORPORATION, et al.,

4
5 Plaintiffs,

6 vs.

7 ROSS INSTITUTE, et al.,

8 Defendants.

.
.
.
.
. Case No. 2:06-cv-01051
.
. Newark, New Jersey
. February 9, 2011
. Volume 2
.

9
10 TRANSCRIPT OF HEARING
11 BEFORE THE HONORABLE MARK FALK
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiff
15 NXIVM Corporation and
16 Nancy L. Salzman:

17 WILLIAM B. MCGUIRE, ESQ.
18 Tompkins, McGuire, Wachenfeld & Barry,
19 LLP
20 Four Gateway Center
21 100 Mulberry Street
22 Newark, NJ 07102
23 (973) 622-3000
24 E-mail: Wmcguire@tompkinsmcguire.com

25 For Kristin Keeffe:

ROBERT D. CROCKETT, ESQ.
Latham & Watkins, LLP
355 South Grand Avenue
Los Angeles CA 90071-1560
(213) 891-8254
E-mail: Bob.crockett@lw.com

1 JOAN E. KARN, ESQ.
2 Latham & Watkins, LLP
3 Newark NJ 07101-3174
4 (973) 639-7537
5 E-mail: Joan.karn@lw.com

6 JOHN M. FALZONE, ESQ.
7 Latham & Watkins, LLP
8 Newark NJ 07101-3174
9 (973) 639-7537
10 John.falzone@lw.com

11 For Keith Raniere: ROBERT M. LEONARD, ESQ.
12 Drinker Biddle & Reath LLP
13 500 Campus Drive
14 Florham Park, NJ 07932-1047
15 (973) 360-1100
16 E-mail: Robert.leonard@dbr.com

17 For the Defendants
18 Stephanie Franco,
19 Morris Sutton,
20 Rochelle Sutton:

21 ANTHONY SYLVESTER, ESQ.
22 Riker, Danzig, Scherer, Hyland &
23 Perretti, LLP
24 One Speedwell Avenue
25 Morristown, NJ 07962-1981
(973) 538-0800
E-mail: Asylvester@riker.com

HAROLD L. KOFMAN, ESQ.
Riker, Danzig, Scherer, Hyland &
Perretti, LLP
One Speedwell Avenue
PO Box 1981
Morristown, NJ 07962-1981
(973) 451-8452
E-mail: Hkofman@riker.com

1 For the Defendants
2 Ross Institute, Rick
3 Ross, Wellspring
4 Retreat, Inc.:

PETER L. SKOLNIK, ESQ.
Lowenstein Sandler, PC
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2500
E-mail: Pskolnik@lowenstein.com

6 THOMAS STEVEN DOLAN, ESQ.
7 Lowenstein Sandler, PC
8 65 Livingston Avenue
9 Roseland, NJ 07068
973-422-6524
E-mail: Tdolan@lowenstein.com

10 For Juval Aviv,
11 Interfor, Inc.:

ROBERT S. LANDY, ESQ.
Friedman, Kaplan, Seiler & Adelman, LLP
1633 Broadway, 46th Floor
New York, NY 10019-6708
(212) 833-1139
E-mail: Rlandy@fklaw.com

14 BENJAMIN S. HOLZER, ESQ.
15 Friedman, Kaplan, Seiler & Adelman, LLP
16 1633 Broadway, 46th Floor
17 New York, NY 10019-6708
(212) 833-1183
E-mail: Bholzer@fklaw.com

18
19 For the Non-party
20 Witness Lesley
21 Kassin:

DAVID PIKUS, ESQ.
Bressler, Amery & Ross, P.C.
325 Columbia Turnpike
Suite 301
Florham Park, NJ 07932
(973) 660-4420
E-mail: Dpikus@bressler.com

24 For the Non-party
25 Witness Barbara
Bouchev:

BARBARA BOUCHEY, Pro Se

1 (Whereupon proceedings reconvened at 11:58 a.m.)

2 THE COURT: Okay. We're back on the record and
3 where were we?

4 MR. SKOLNIK: Well, Your Honor, I'm not sure
5 exactly where we were. But before we leave the Wellspring/Liz
6 Shaw issue; I am reminding myself that Wellspring and Paul
7 Martin are separate parties. Both of them were served and
8 responded to interrogatories and document requests four years
9 ago. At the time when Dr. Martin responded to his document
10 request, he searched his personal laptop and produced all
11 documents that would have been responsive to the request at
12 that time. So, I'm not quite sure what it is that's going on
13 here. Is this a challenge to the adequacy of that document
14 response that comes four years after the fact?

15 I mean, the whole question of who owned the laptop
16 and whether or not Dr. Martin did or did not take notes on it
17 during depositions is completely irrelevant to the fact that
18 documents were called for. They were responded to four years
19 ago.

20 MR. MCGUIRE: Can I be heard briefly on that,
21 Judge? First of all, I don't know how Mr. Spoonman (phonetic)
22 knows whether or not Dr. Martin looked for his laptop, because
23 at that time nobody knew there was a laptop even. Secondly,
24 earlier today Mr. Skolnik stated that why did we wait so long
25 to take a deposition of Wellspring. He knows full well that

1 for years we tried to get Dr. Martin. Mr. Skolnik had
2 represent him and I accepting it then, and I accept it now.
3 The man was very ill. Leukemia I think I had. I may be wrong
4 on the disease. As a result of which we couldn't take his
5 deposition. He then died. We then sent a 30 B(6), and I
6 don't know whether it was Doctor or Mr. Bournstead (phonetic)
7 was the 30 B(6) representative. He knew little, if anything.

8 If you read his deposition, I don't remember; I
9 don't know. He did remember the names of a couple of
10 employees. One of them was Shaw. We deposed Shaw. Mr.
11 Skolnik directed the witness not to answer about who the other
12 employees were. We wanted to find out administrative
13 employees, were there minutes of board meetings, things of
14 this sort. The 30 B(6) witness who appeared really had no
15 knowledge, literally. He could remember the names of a couple
16 of employees, but that was about it.

17 We'd still like to know the names of the employees
18 and I think Your Honor will recall there was a conversation
19 with one of your law clerks and Mr. Skolnik put his position
20 in, and I did not put a position in at that time. And I think
21 that, that was going to be brought to your attention. So, I'd
22 like to be heard on it. Because I think we're entitled to
23 know, going back in history the answers to interrogatories.
24 The interrogatories called for names of old employees. You
25 know how it was answered? Just the one, Dr. Martin. We had

1 no knowledge of what was going on, and we still don't know the
2 names of employees so that we can bring them in for a
3 deposition. We can't talk to them. They're represented by
4 counsel, or at least Mr. Skolnik has taken that position and
5 we respect that.

6 But the only way we can find out who the other
7 employees were is to depose them. Now, it's all well and good
8 for Mr. Skolnik to say, they don't have any knowledge. That's
9 not for him to determine. That's for us to determine. Maybe
10 they do, maybe they don't. But we want to know the names of
11 other employees and their positions so that we can take a
12 deposition if necessary.

13 THE COURT: Well, I'm not go to order anything to
14 do with the laptop right now. I'm going to tell you that. I
15 don't know whose it is. I don't know if I could tell whoever
16 it is. If the whole level of electronic discovery. I don't
17 know if it even justifies it if that information was there.
18 But I think the issue, the relevance of it has been
19 identified. And that is whether there's going to be a claim
20 that they were separate -- that they were acting separately so
21 that assuming that the Plaintiffs prevail, the judgment would
22 only be against -- or arguably against Dr. Martin and not
23 Wellspring.

24 And I think that you have an obligation to update
25 your discovery responses, Mr. Skolnik, to sort of identify

1 that issue. I think perhaps that issue should be addressed
2 with an interrogatory to be done in ten days. In other words,
3 propound an interrogatory about that.

4 MR. MCGUIRE: Well, there is one out there, Judge,
5 already. But if you want us to propound another one --

6 THE COURT: Well, I mean it should be a certified
7 answer. And the answer requires and implies that when a
8 lawyer gives an answer that there's been a diligent search for
9 the information.

10 MR. MCGUIRE: Well, the answer was, Dr. Martin, the
11 only employee. We only found out during the pending -- yeah,
12 I guess it was -- that there were others and he couldn't
13 remember their names. He remembered one or two, and one was
14 Shaw. And we took Shaw and tried to ask her who the other
15 employees were. And presumably she was in the position to
16 give that information, and Mr. Skolnik directed her not to
17 answer.

18 MR. SKOLNIK: Your Honor, I'm sorry. It's just a
19 misrepresentation to say that there was an interrogatory that
20 asked for the employees and we said, Dr. Martin is the only
21 employee.

22 MR. MCGUIRE: You said Dr. Martin, period. It
23 didn't say Dr. Martin only. It said Dr. Martin led us to
24 believe.

25 MR. SKOLNIK: Well, still if Mr. McGuire has the

1 Document then he could actually show it to you instead of
2 paraphrasing it in ways that misrepresent. The fact is that
3 they ask for the names of every employee of Wellspring from
4 time immemorial and our response was basically that this calls
5 for information that is burdensome, that is irrelevant, blah,
6 blah. Paul Martin is the director of Wellspring. That was
7 all we said. If they had a problem with that answer, that
8 problem should have been raised four years ago. They know how
9 to read interrogatories. These are very sophisticated lawyers
10 here.

11 They all knew very well how to read what had been
12 said and say, well Mr. Skolnik, you're not really answering
13 the question. You're not really saying. Are you saying that
14 he's the only employee? No, I was not saying that he was the
15 only employee. What I was saying is, here is the information
16 I'm going to give you now in response to that interrogatory.
17 Paul Martin is the CEO of Wellspring -- you have some problem
18 with that, raise it, four years ago.

19 MR. MCGUIRE: Judge, if you want, I'll read the
20 interrogatory to you. I have it in front of me.

21 THE COURT: Okay.

22 MR. MCGUIRE: If you want me to read it.

23 THE COURT: Sure. If you want.

24 MR. MCGUIRE: It's Interrogatory 4, "Identify all
25 employees of Wellspring, for each state how many hours each

1 works per week and whether they are paid or not paid for their
2 work." If there are objections to the interrogatories there's
3 a different -- vague and ambiguous. I don't think it was
4 vague and ambiguous at all -- seeks information -- excuse me.
5 "It is unduly burdensome and over broad." I don't get that
6 one. "It seeks information that's not relevant in this
7 action. It is not reasonably limited as to time. Without
8 waiving the foregoing, Wellspring answers as follows: Dr.
9 Paul Martin is director of Wellspring Retreat and Resort
10 Center and receives a salary." We read that to mean he's the
11 only employee.

12 THE COURT: Okay.

13 MR. MCGUIRE: Simple as that.

14 THE COURT: Right.

15 MR. MCGUIRE: And when we tried to get the names of
16 other employees through Ms. Shaw, Mr. Skolnik directed her not
17 to answer, which I thought was improper at the time and
18 continued to -- it's improper.

19 THE COURT: Well, I think that what I'm going to
20 authorize is three contention interrogatories -- but I want to
21 have contention interrogatories by whether it be NXIVM or
22 Keeffe. I'm not sure who is seeking this information -- to
23 Wellspring regarding the issue that was stated by Mr. Crockett
24 as relevant here. I need to get control to the extent I can
25

1 of discovery. At this late stage, contention interrogatories,
2 which are, of course permitted, would help.

3 If the -- and this should be answered within ten
4 days. And if the answer is that there's going to be an
5 argument that Wellspring had nothing to do with Paul Martin,
6 then I would be inclined to have Mr. Skolnik update your
7 answers to discovery regarding employees. And to do a search
8 for anything that would show what they, you know, what they
9 were doing. In other words, whether Wellspring was or wasn't
10 involved in the posting here. Now, I still -- I'm just not
11 prepared to make any order on that computer. It seems pretty
12 far afield, one, and as I say, I don't know who the computer -
13 - I don't know I could even compel it, or what would be
14 involved. So, that's the steps we're going to take.

15 MR. SKOLNIK: May I tee up the next issue?

16 THE COURT: Yes, sir.

17 MR. SKOLNIK: This is out of deference to Mr. Pikus
18 who has been waiting patiently as a third party. This
19 involves the deposition of Lesley Kassin. Mr. Pikus sent a
20 letter in asking for a protective order with respect to Lesley
21 Kassin, and I can summarize very briefly why we want Lesley
22 Kassin.

23 THE COURT: --

24 MR. SKOLNIK: Lesley Kassin -- this goes to the
25 very heart of this case. We had a very important witness in

1 this case whose name was Aaron Kassin, who testified in an
2 affidavit for us that Rick Ross came over to his house -- he's
3 married to Lesley Kassin. He came -- Rick Ross came over to
4 his house and demanded to see Aaron Kassin's instructional
5 materials from NXIVM. And in the affidavit, Mr. Kassin said,
6 I refuse to give that material over to you, it's trade secret.
7 It's confidential. And he made that statement in front of
8 the Suttons who were there. And me made that statement to
9 Rick Ross.

10 So, that goes right to the issue of mens rea for a
11 number of -- a number of factors that are important in the
12 Court's -- in the malice issues that are in this case. They
13 were warned specifically not to take this material. It was
14 confidential and trade secret material.

15 Well, we became very concerned when the Sutton
16 company hired that witness a few weeks ago and gave him a job.
17 So, we deposed him and Mr. Kassin completely flipped. And he
18 said, that's not the reason I gave Mr. Ross when he came. I
19 didn't have the materials anymore. And he basically said, I
20 don't remember any of the other events, and so when we step in
21 through his declaration, he says, I don't remember that. I
22 don't remember that. I don't remember that, and I don't
23 remember that.

24 Well, Lesley Kassin was there that evening. She
25 would have heard it. And she's the daughter of the Suttons.

1 So, we had no interest in Lesley Cattle until Aaron Kassin is
2 hired by mores Sutton's company. And he -- and Mr. Kassin
3 then flipped his testimony.

4 THE COURT: The original statement was in a sworn
5 certification?

6 MR. SKOLNIK: Yes, so I'm -- yes, so we'd step
7 threw the necessary means to get that memorialized. So, that
8 we can repeat it at trial, yes.

9 THE COURT: So, I guess --

10 MR. MCGUIRE: Thank you, Your Honor, may it please
11 the Court. And I appreciate Counsel advancing this on the
12 agenda. Lesley Kassin is a housewife and she's got three
13 young children at home, which is not per se a reason to quash
14 her subpoena, but it gives some context to this application.

15 I had previously parachuted into this case and
16 shared some of the remarks that the Court made earlier about
17 it taking on a life of its own. When Aaron Kassin was
18 subpoenaed for a deposition. Now, it's not as if the Sutton's
19 just hired Aaron Kassin out of the blue in order to gain some
20 advantage in this litigation. Aaron Kassin has been their
21 son-in-law for probably over a dozen years and they're all
22 part of the Syrian community and they work with each other,
23 and they've been working with each other for a long, long
24 time. So, there's nothing nefarious about Mr. Kassin going to
25 work for the Suttons and I correct the record to say that he's

1 been working for them or with them for more than just the past
2 few weeks.

3 Mr. Kassin made a remark during the course of his
4 deposition, Your Honor, that turned out to be somewhat
5 prophetic. When he was asked to identify various people who
6 knew he that was involved with NXIVM and he testified in the
7 case, he hesitated a little bit. And he was asked why he was
8 hesitating and he said, well, you know, my problem is from
9 what I know about this case, everybody whose name gets
10 mentioned, gets subpoenaed. And sure enough, that's
11 essentially what has happened here.

12 I may take issue. I don't have the transcript yet
13 with the summary that was given of his testimony. Suffice it
14 to say that he was being asked whether he specifically
15 remembered events that happened close to ten years ago. And I
16 would say his credibility would be more suspect if he sat
17 there and said, yes, he had a vivid recollection of everything
18 that happened in this Particular matter ten years ago.

19 Now, Aaron Kassin is not a party to this
20 litigation. He has no affiliation with NXIVM. He did take
21 their course and he took that course back, I believe, in 2001.
22 He stopped the course very soon after taking it. And he has
23 affirmatively alleged to have done whatever it is that NXIVM
24 wanted him to do with the materials. He has kept them
25 confidential. There's not the least suggestion that he's done

1 anything wrong. He's not part of the inner workings. He
2 would have no knowledge -- he's not a lawyer as to whether
3 it's really a trade secret or whether it's not a trade secret.

4 Nevertheless, NXIVM -- and this is back in 2003,
5 had their attorneys prepare an affidavit for Aaron's
6 signature, and he signed it. And in his deposition he
7 identified his signature on it and acknowledged the fact that
8 he had signed it. The affidavit, Your Honor, is about 90
9 percent hearsay. It talk about what he saw other people do,
10 what other people said. He refers in conclusory terms to the
11 materials being confidential. And he acknowledges here and
12 acknowledged in his deposition that Rick Ross had come to his
13 house and he refused to provide him with materials and told
14 him to leave. The fact that he didn't have the materials at
15 that time is not inconsistent with his affidavit, it's simply
16 a fact that NXIVM, which drafted this affidavit didn't see
17 appropriate to put into it. There's no inconsistency there.

18 Now, the bottom line here, Judge, is that what Mr.
19 Kassin knows, other than what he has testified to, which is
20 that Rick Ross came to their house and they refused to
21 cooperate with him, it's all either hearsay, it's speculation,
22 it's admitted by other witness in the proceeding, whatever it
23 may be, if NXIVM's case is going to have to turn on Aaron
24 Kassin's affidavit, I'm wondering why they're investing
25 millions of dollars in prosecution in this court, because

1 they're going to have a really tough time if he and his wife,
2 no less, are the heart of this case. That was what was just
3 explained.

4 Apparently, Lesley Kassin, his wife is being
5 subpoenaed because she happened to be in the house at the
6 time. Maybe she saw something, maybe she didn't. Well, let's
7 take a look at the rules that apply. And Rule 26 is what I
8 would focus on. And I know, Judge, I don't really have to
9 tell you, you probably have the rule memorized. But since
10 it's gotten so long over the years, let me laser in on what I
11 think is most relevant to --

12 THE COURT: Okay.

13 MR. MCGUIRE: -- our concern about this subpoena.
14 As we know, depositions are limited to ten per side in civil
15 cases. Having looked at the docket I would venture to say
16 that we've probably exceeded that by a factor of about 500
17 percent in this case so far. You can say to me, Your Honor,
18 that's none of your business because you're a non-party, but
19 what happens, Judge, when you reach the ten page -- excuse me
20 -- the ten person limit for depositions, then Court approval
21 is needed to go beyond the ten and then the standard of Rule
22 26 subdivision B, Subsection 2, comes into play.

23 And what that says, in addition to the general
24 ability of a witness to suppress a deposition because it's
25 annoying or burdensome. It says that the deposition will not

1 be allowed if it's unreasonably cumulative, or duplicative, or
2 can be obtained from some other source that is more
3 convenient, less burdensome, or less expensive; or the party
4 seeking the discovery has had ample opportunity to obtain the
5 information by discovery in the action -- presumably other
6 discovery. Or the burden or expense of the proposed discovery
7 outweighs its likely benefit concerning the needs of the case,
8 the amount in controversy, the party's resources, the
9 important on the issues, and the importance of the discovery
10 resolving those issues.

11 Judge, if you apply that test to Lesley Kassin, she
12 shouldn't be hailed in for a day-long deposition. You know,
13 what she could say now we're getting to third or fourth level
14 hearsay, what her husband told her. And you know what, Judge?
15 Maybe there's a spousal privilege that's involved there.
16 Maybe if the question is, particularly since her parents are
17 involved in this litigation, you know, there are going to be
18 discussions about that -- you know, spousal privilege. Of
19 course one spouse can talk in confidence to another about
20 litigation that the in-laws or the parents are involved in.

21 I'm not sure that there's very much that she could
22 testify about if what they're seeking to get here are the
23 comments made to her by Aaron Kassin. But when you look at
24 it, Judge, it's really a balancing test. I can't read from
25 this affidavit that's in question to demonstrate that it's all

1 hearsay. It's all about other people and the few things that
2 may be marginally relevant here from Aaron Kassin -- he's
3 already acknowledged in his deposition were acknowledged in
4 his past recollection that's recorded in the affidavit. So,
5 Judge, I'm asking that the subpoena be quashed.
6 Alternatively, if it's going to go forward, I think that this
7 is very much an appropriate case for the party seeking the
8 discovery to pay her Counsel fees.

9 I think from what you've seen here, no witness
10 should go into a deposition in this case without an attorney
11 present and that's my application. And I thank you, Judge,
12 for hearing.

13 MR. CROCKETT: Ten seconds, Your Honor.

14 THE COURT: Sure.

15 MR. CROCKETT: We're not seeking any hearsay.
16 We're only seeking to hear what Rick Ross said, and what the
17 Suttons said. That's not hearsay. Mr. McGuire -- make a
18 comment --

19 MR. MCGUIRE: This -- has as its genesis, testimony
20 by -- go ahead -- by Rick Ross, the Defendant in this case.
21 He testified that he and Lesley Sutton's parents arrived at
22 Aaron and Lesley Kassin's home unannounced. When they
23 entered, according to Mr. Ross, they exchanged some
24 colloquies. It wasn't clear just about what the colloquies
25 were. But Mr. Aaron Kassin became angry and literally through

1 Lesley Kassin's mother and father out of the house.

2 Literally.

3 The testimony of the affidavit of Mr. Aaron Kassin
4 states that he was repeatedly -- maybe it wasn't repeatedly,
5 but on a number of occasions, asked by Mr. Ross for copies of
6 what we contend were confidential materials. Mr. Kassin, in
7 his affidavit stated that he refused to turn those materials
8 over to Mr. Ross. I think the logical conclusion about why
9 the parents were thrown out of the house with Mr. Ross was
10 because he was asking for materials and Mr. Kassin refused to
11 turn them over. Now, Ms. Kassin was there. And Mr. Aaron
12 Kassin kept saying, I don't remember, it was ten years ago.
13 But it was her parents who were thrown out of the house. And
14 we're entitled to know the circumstances under which that
15 happened. I suspect it's not an everyday occurrence. And so
16 that's why this deposition is needed.

17 THE COURT: Thank you. I'm ready --

18 MR. MCGUIRE: And it will not be a full day.

19 THE COURT: I'm ready to decide this. Lesley
20 Kassin, that's apparently the daughter of Mark and Michelle
21 Sutton, correct?

22 MR. SKOLNIK: That's correct, Your Honor.

23 THE COURT: Okay. And she's married to Aaron
24 Kassin who was previously deposed in this case. Aaron Kassin
25 apparently attended a -- seminar and submitted a declaration

1 in this case when it was pending in the northern district of
2 New York. I have the declaration before me, and I've just
3 read it. I think it's a fair characterization to say that it
4 was -- well, it was submitted in support of NXIVM's request
5 for a preliminary injunction. Apparently at some later date,
6 which I'm not sure what that date is, whether it's after he
7 was employed or not employed, whatever -- and I -- there's no
8 aspersions cast about that whatsoever. I don't even think
9 it's -- I'm not concerned with that or moved by that, which
10 may affect some other issues we're going to address shortly.

11 But apparently he backtracked to some extent on his
12 affidavit at least, Mr. Crockett in seeking the deposition
13 states, regarding Lesley Kassin, that she was present when
14 Rick Ross urged Aaron Kassin to turn over NXIVM's confidential
15 material. And he did say this in some detail in the affidavit
16 in support of the TRO and PI. And to the extent that he has
17 backed off or cannot remember that, unlike some of the other
18 issues we've discussed, this one is quite relevant in my view,
19 quite relevant. If indeed Ms. Kassin was present and heard
20 Rick Ross say whatever he said to Aaron Kassin, which was put
21 forth in this certification or this affidavit; that really
22 does go directly to the primary claim in the case.

23 So, I am not going to -- I am going to deny the
24 request to quash the subpoena. I believe it is directly
25 relevant. And I will allow the Plaintiffs to take the

1 deposition of Lesley Kassin for one hour. And if there's a
2 need to go beyond one hour, you can call me and I will not
3 order more than an hour unless there's extraordinary reasons.
4 I think the questioning -- I'm not going to let this get out
5 of hand and I think the questioning should go directly to that
6 issue and it's a simple issue. And that's that. And the
7 deposition should also be done at the convenience of Ms.
8 Kassin vis a vis location and time. What's the next issue?

9 MALE VOICE: Thank you, Your Honor. May I be
10 excused?

11 THE COURT: Absolutely.

12 MALE VOICE: Thank you.

13 THE COURT: What's the next issue?

14 MR. CROCKETT: I think Plaintiffs have exhausted --

15 MR. MCGUIRE: No, we have some more.

16 MR. CROCKETT: We have? Oh, sorry.

17 MR. MCGUIRE: That's okay.

18 MR. LEONARD: Judge, maybe I'll just jump in with
19 one -- that okay.

20 THE COURT: Are you listening --

21 (Whereupon Court and Counsel confer.)

22 MR. MCGUIRE: I have no problem. I think we may --

23 THE COURT: Okay. You want to jump in with one?
24
25

1 MR. LEONARD: Your Honor, with regard to -- there
2 was a subpoena issued to David Franco and Mr. Franco is the
3 son of Stephanie Franco.

4 THE COURT: Yeah, I mean, I guess I have to look to
5 -- who noticed it?

6 MR. LEONARD: Counsel for Ms. Keeffe.

7 THE COURT: Mr. Crockett, I certainly -- I don't
8 have any articulated basis of relevance. I'm highly inclined
9 to quash the subpoena on David Franco. It's just -- seems
10 like a fishing expedition. You know, I guess your letter
11 suggested that he may have had some -- "he may have had some
12 role in this," that's not a valid basis as far as I'm
13 concerned. Frankly, this is my view on this and many of the
14 other subpoenas. So, I'd be happy to hear from Mr. Crockett
15 as to this. But as far as I'm concerned, from what I've
16 heard, I would quash this subpoena.

17 MR. CROCKETT: Very well, Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. LEONARD: Your Honor, since I'm on a roll --

20 THE COURT: Yeah, go ahead.

21 MR. LEONARD: Thank you, Judge. There was a
22 subpoena that had been issued to an attorney located in the
23 state of New York, Mr. Louisbrand (phonetic)?

24 THE COURT: Yeah, this came up at the very last
25 minute. But go ahead --

1 MR. LEONARD: Well, yeah, and this --

2 THE COURT: No, I don't mean the subpoena. I mean,
3 I didn't find out about it until I guess -- well maybe just a
4 couple of days ago.

5 MR. LEONARD: Yes. And Your Honor, he had been an
6 attorney that had represented Plaintiff way back in the
7 beginning of this case. And at issue with regard to Mr.
8 Louisbrand is what happened with regard to an apparent or
9 alleged audiotape of a conversation. And that really gave
10 rise to us seeking testimony from him. There had been
11 testimony from Ms. Keeffe with regard to the physical location
12 of the tape and who was in possession of that. And it's
13 important because the audiotape allegedly was the conversation
14 between Michael Sutton and Stephanie Franco. And back at a
15 point in time that Plaintiff contends relevant affairs were
16 conducted and topics were discussed. So, the subpoena was
17 issued.

18 Mr. Louisbrand declined to attend claiming that
19 there may have been privileged issues. He was -- there was
20 then a motion made to the northern district of New York. The
21 subpoena was addressed to Mr. Louisbrand who worked and lives
22 in Albany. The motion was subsequently resolved by way of the
23 fact that Mr. Louisbrand would just attend his deposition.
24 All objections to privilege and all objections to work product
25 -- any objection for that matter -- is preserved.

1 And frankly we don't intend to try to pierce any
2 privilege and talk about -- it really comes down to issues
3 that relate to, where is this tape. Did you ever have it?
4 Did you ever see it? There's a transcript that was prepared.
5 Did you have any part in that? And those issues which we
6 believe are important with regard to credibility issues as
7 well as potentially a spoliation aspect of this case. So, the
8 tape cannot be located. The transcript which apparently has
9 been provided -- I haven't provided to the Court, but I will
10 submit to you -- I would make the representation, you know,
11 that it's questionable. And I think that we can -- I can
12 demonstrate that if Your Honor wanted me to do that.

13 But so, it's just a deposition, Your Honor, without
14 any objections being waived of any kind. And in fact, the
15 discussion with Mr. Louisbrand was that we'll ask questions;
16 if Counsel for NXIVM objects, well, we'll deal with the
17 objections as they come. And so, nothing's been waived. It's
18 simply a deposition.

19 THE COURT: Mr. McGuire?

20 MR. MCGUIRE: Judge, there a couple of problems
21 here. First of all, Mr. Louisbrand did represent the NXIVM
22 parties. There were about three or four firms later involved
23 and then we succeeded. I guess we were number five or six. I
24 think some declaration's already on indicating we were number
25 seven. We wish we knew where the tape was also. We don't

1 know. Mr. Louisbrand, for whatever reason and I can't fathom
2 a reason, refuses to talk to any of the NXIVM attorneys. I
3 don't know what he's going to say, haven't a clue.

4 I don't know whether he's going to blurt out
5 something that would be an attorney/client privileged remark,
6 we have to move to strike it. There has been testimony -- I
7 don't have to remind Your Honor that it's rare than an
8 attorney involved in a litigation is deposed is going to be
9 less intrusive means. In this case, Kristin Keeffe has
10 testified to it, Michael Sutton has testified to it. Michael
11 Sutton has an affidavit or a certification. I don't know how
12 it's entitled. And I believe that Aaron Kassin also said
13 something about the tape being played in Mr. Louisbrand's
14 office.

15 I will stipulate that I don't know where the tape
16 is. I haven't a clue where the tape is. And I'll stipulate
17 to that. So, I don't know what more they want to get from Mr.
18 Louisbrand, and I'm fearful that something is going to be said
19 there that they won't disclose to us in advance. And why the
20 stipulation that none of the parties know what happened to the
21 tape. I don't think anybody will disagree there was a tape at
22 one particular point in time. Michael Sutton has testified
23 under oath that he recorded this conversation with Stephanie
24 Franco, that a transcript was prepared. It was shown to him.
25 He said, yes, that represents the subject matter of the

1 conversation I had with his sister, or half sister. I forget
2 now which. I don't want to state anything wrongly. But
3 there's no reason for this deposition.

4 I don't care what the man says. My guess is he
5 doesn't know whatever it is either. But I'm guessing because
6 he won't talk to me. I've made numerous efforts to
7 communicate with him. And whether there's a big issue -- I
8 don't know what the problem is, why he won't talk to me, but
9 he won't. And so, we're asking to quash the deposition notice
10 on Mr. Louisbrand, because if the sole purpose is to find out
11 about this tape, we'll stipulate we don't know where it is.
12 And I suspect, although, I can't say this; that he doesn't
13 know where it is. The number of firms or records were turned
14 over to the succeeding firm, to another firm, to another firm,
15 we wish we could find the tape. We can't. But this deposition
16 should not be allowed under this circumstances.

17 THE COURT: Yes?

18 MR. CROCKETT: Yeah, Your Honor. Ms. Keeffe
19 testified that Mr. Louisbrand was the gentleman who lost the
20 tape. And it becomes relevant because as was pointed out in
21 testimony, the transcript -- the so-called transcript
22 inherently has issues. And this will go to a -- of the case.
23 I shouldn't have to describe all my strategies. But the point
24 is, if there's a spoliation issue here, it does become
25 critical if Mr. Louisbrand says, I didn't lose anything. I

1 never had possession of that tape. It was always in the
2 possession of Ms. Keeffe. That becomes critical here.

3 MR. MCGUIRE: There's no spoliation at all. Ms.
4 Keefe testified that her recollection was that it was last in
5 the possession of Mr. Louisbrand. Whether that's so or not, I
6 don't know. I don't know. That's all she remembered about
7 it. And you've seen, I think the certification or affidavit
8 of Aaron Kassin. I don't have it in front of me, but I think
9 he referred to that. We don't know where the tape is. And
10 what I'm fearful of is, if you allow this, there's going to be
11 questions along the line and I'm not going to know whether
12 there's an attorney/client privilege, and work-product
13 privilege, or anything else.

14 In this particular case, this was a tape of a
15 conversation, the one party to it said he recorded it.
16 Stephanie Franco admits that she spoke with him and that the
17 transcript -- she claims there's some errors in the
18 transcript. That's for a jury to decide. But this man can't
19 add anything to that.

20 MALE VOICE: Ms. Keeffe said that Mr. Louisbrand
21 made the transcript, Your Honor.

22 MR. MCGUIRE: I don't think she said that.

23 MR. CROCKETT: I believe she testified to that.
24 So, if it comes to court, if in fact it's ripe with errors and
25 the tape now has disappeared. And look, there's easily way to

1 deal with objectionable -- we don't intend to ask those
2 questions, but we'd be perfectly willing, of course, if
3 there's an objection, until the objection is resolved, we're
4 not going to press for an answer, of course. We're just
5 looking to know, if he ever had the tape; did he receive the
6 tape; is he in possession of the tape; did he make the
7 transcript. They were -- in his office.

8 THE COURT: Well, here's what I'm going to do,
9 folks. Let me decide this. It's quite true -- all right.
10 Mr. Louisbrand is NXIVM's former counsel. He previously
11 represented NXIVM while the case was pending in the northern
12 district. And he's been subpoenaed by the Franco's. I have
13 relatively little information about it. But I do agree with
14 Mr. McGuire that the deposition is problematic and unusual,
15 because obviously you're dealing with someone who is a lawyer
16 in this case.

17 But if you look at the law, the well known Upjohn
18 case, 449 U.S. 383; that case clearly states that -- it
19 rejects the concept of completely not having a deposition,
20 because you might have attorney/client and work-product
21 objections of say a formal counsel. Privilege based
22 objections can be made, if appropriate, during the course of
23 the deposition. So, I don't think that the concept of
24 attorney/client and work product -- forecloses the deposition
25 entirely.

1 However, I do think it's a problematic deposition.
2 And I'm going to allow it for a short period of time. And I
3 think it might be a good idea, Counsel, if you gave an outline
4 of the questions in advance to Mr. McGuire or Mr. Crockett,
5 whoever is dealing with this. And certainly if there's any
6 question of privilege, you can call me at once. But it's my
7 view that I don't intend to get many calls about it, because -
8 -

9 MR. CROCKETT: One hour.

10 THE COURT: Because I don't think any questions
11 going to privilege or anything like that should be answered.
12 I mean, you can ask about this tape and you know, I don't
13 think that they can -- I'm not sure if you have an objection,
14 Mr. McGuire, like you know, that, that's work product or
15 something. I'll take it up at the time. But I'm suggesting
16 you get the questions in advance. We'll see what he has to
17 say about the tape, and that's that.

18 MR. MCGUIRE: And Judge, I may respectfully
19 disagree --

20 THE COURT: Sure.

21 MR. MCGUIRE: -- but I will abide by the order.
22 What I'm concerned about is other attorneys who may be there
23 may want to go into different areas. I don't want that to
24 happen. If it's restricted to the tape, it should be
25 restricted to the tape.

1 THE COURT: Well, certainly on the record before
2 me, that is true. I am not going to -- so, you can represent
3 that I've said this on the record and call me. Stop the
4 deposition if you feel that, that's appropriate. Certainly on
5 the record we have here. If someone comes up with something
6 new, we can talk about it. I'm talking about very limited
7 questioning there.

8 MR. MCGUIRE: And how long, Judge, an hour?

9 THE COURT: Yeah, at most. I almost think it could
10 be less than an hour. But let's make it an hour, yeah.

11 MR. CROCKETT: Thank you.

12 THE COURT: Okay. What's next? Anything --
13 Defendants? Mr. Skolnik?

14 MR. SKOLNIK: Yes, Your Honor. As long as we're on
15 the subject of which deposition should and should not proceed,
16 Ms. Keeffe has noticed depositions in Rapid City, South Dakota
17 and Phoenix, Arizona. And I think it might be useful to put
18 in context the sum total of testimony about these two
19 witnesses. This is Mr. Crockett questioning Rick Ross. "You
20 know who Jeffrey Jacobson is, right?" Answer: "Yes."
21 Question: "He's the -- he gave you information about
22 scientology." Answer: "We have talked about scientology."
23 Question: "Did he send any materials to you about
24 scientology?" Answer: "I don't recall specifically. We have
25 e-mailed and he may have sent me a link to something. I don't

1 recall him sending me material." Question: "Did you consult
2 him in connection with NXIVM." Answer: "No." Next question:
3 "Was Julie Ludhart (phonetic) your webmaster?" Answer: "She
4 was the webmaster for the Ross Institute for a period of
5 time." That is the sum total of deposition testimony about
6 both of these witnesses.

7 I now want to hand up to Your Honor declarations
8 from Mr. Jacobson and Julie Ludhart.

9 (Whereupon Court and Counsel confer.)

10 THE COURT: So what -- I'm not sure what I'm
11 supposed to be doing here, Mr. Skolnik.

12 MR. SKOLNIK: Well, I --

13 THE COURT: I have reviewed --

14 MR. SKOLNIK: I am asking, along with the witnesses
15 themselves for these depositions to be quashed on the basis
16 that neither of them have the vaguest knowledge about any of
17 the issues in this case, let alone on the issues that Mr.
18 Crockett has identified as why he is that he wants to depose
19 them.

20 THE COURT: I mean, this is a subpoenaed witness
21 and where is the subpoena issued from?

22 MR. SKOLNIK: One of them issued out of Arizona and
23 one of them about of Rapid City, South Dakota.

24 THE COURT: I don't really have the ability to
25 quash them, right?

1 MR. SKOLNIK: Your Honor, you have the ability to
2 supervise the -- in this case.

3 THE COURT: I do, but --

4 MR. SKOLNIK: You have the ability to say, each
5 party has taken more than enough depositions here. We have a
6 March 1 discovery cut off. These depositions are irrelevant.
7 They should not proceed.

8 THE COURT: No, I understand. And I'll say -- like
9 before, I'll give my opinion and say what I have to say,
10 perhaps issue some kind of order. But I mean, I can't quash
11 these depositions. You understand. I think that's a fair
12 statement of the law.

13 MR. SKOLNIK: Your Honor, I think that you have the
14 power to instruct the parties not to proceed with these
15 depositions.

16 THE COURT: Yeah, I can issue an order under Rule
17 26, but I still can't quash the subpoena. I understand. In
18 any event, let's go to it. It just seems -- I mean, okay.
19 Jeffrey Jacobson, he's -- I mean --

20 MR. CROCKETT: Your Honor, may I sort of cut this
21 off?

22 THE COURT: Yes.

23 MR. CROCKETT: Okay. I had an e-mail exchange with
24 Mr. Skolnik where he told me the -- I think I was interpreting
25 correctly -- they're not going to make us part of their case,

1 but that NXIVM's course material, stolen course materials, are
2 a rip off of scientology. Rather his case is going to be
3 there is prepublication. And if that's the case, I have no
4 interest in deposing Mr. Jacobson.

5 THE COURT: Okay.

6 MR. CROCKETT: And the only reason I thought we
7 were going there is because Mr. Ross testified for pages and
8 pages and pages about how NXIVM was a rip off of scientology.
9 And we have the phone records showing, you know, hours and
10 hours of telephone calls between the two at about the time
11 this material was published. So, if that's not an issue, I
12 don't care to depose Mr. Jacobson.

13 THE COURT: Okay. That's --

14 MR. SKOLNIK: Your Honor, it is.

15 THE COURT: No.

16 MR. SKOLNIK: The fact is that you know, Mr.
17 Crockett keeps on trying to winnow down and narrow those
18 things that I would be able to argue on summary judgment.
19 This is an expert issue. Mr. Ross happens to also be an
20 expert on scientology. His website has documents, an entire
21 area on scientology every bit as expansive as it's one on
22 NXIVM. So, if Mr. Ross says that in my opinion NXIVM is a rip
23 off of scientology, why does anybody have to depose Mr.
24 Jacobson who happens to be an expert on scientology, but has
25 never spoken to Mr. Ross as he declares under sworn oath here?

1 He has never discussed NXIVM with Rick Ross. He has no
2 interest in NXIVM. Why should he have to be deposed and why
3 should I have to make representation about what Rick Ross says
4 about the intersection of scientology and NXIVM in order to
5 satisfy Mr. Crockett that he doesn't have to depose this man
6 who should not be deposed?

7 THE COURT: I'm not sure. I mean, NXIVM has a
8 claim for misappropriation of trade secrets against Rick Ross.

9 MR. SKOLNIK: Yes.

10 THE COURT: And they have a claim for copyright
11 infringement against Rick Ross, tortuous interference against
12 Rick Ross. I mean, what does scientology have to do with it?

13 MR. SKOLNIK: Nothing. Absolutely nothing.

14 THE COURT: So, why -- I don't -- I mean, right now
15 I'm -- this thing says the only thing he knows about the group
16 is that for the so-called "holy hockey puck." What is that?
17 I don't even know what that means.

18 MR. SKOLNIK: What he's saying, Your Honor, is -- I
19 know nothing about NXIVM. For that matter, when I first heard
20 the name "NXIVM" I confused with some organization that
21 propounds a holy hockey puck. What he's saying to Your Honor
22 is, I don't know the first thing about NXIVM.

23 THE COURT: That propounds --

24 MR. SKOLNIK: I've never discussed NXIVM with Rick
25 Ross. Why should I be deposed in this case?

1 MR. CROCKETT: Your Honor, I've already said I'm
2 withdrawing the request.

3 THE COURT: Yeah.

4 MR. CROCKETT: And I have a letter from Mr.
5 Skolnik, which I'll use with the district court at the
6 appropriate time if he tries to change his mind. But he says
7 in a letter to Your Honor, February 7th -- I guess that's just
8 a couple of days ago -- Footnote 3, "Although Mr. Crockett
9 goes on at length about the Ross testimony concerning
10 similarities if not wholesale plagiarism of -- and
11 scientology's concepts."

12 This is simply not a relevant issue in this case.
13 The thrust of Ross's dense to NXIVM's trade secret claim is
14 not that NXIVM resembled scientology per se, but that NXIVM
15 has itself peppered the internet and the copyright office with
16 its purported secrets. Once I saw that I had no interest in
17 Mr. Jacobson.

18 THE COURT: Okay. I think that resolves that as
19 far as I'm concerned. Do you disagree with that, Mr. Skolnik.

20 MR. SKOLNIK: I don't even know what you believe is
21 resolved, Your Honor.

22 THE COURT: I just heard him say -- Mr. Crockett
23 say he was withdrawing the request to take this deposition.
24 Okay?

25

1 MR. CROCKETT: We're finished -- that. Based upon
2 that footnote.

3 THE COURT: You've made your record. I understand
4 that. I don't think -- I can't see that ultimately --

5 MR. SKOLNIK: So, we can address the Ludhart
6 deposition then?

7 THE COURT: Pardon me?

8 MR. SKOLNIK: The other one?

9 MR. CROCKETT: No, I'll withdraw that as well, Your
10 Honor.

11 THE COURT: Good.

12 MR. MCGUIRE: That was really --

13 MR. SKOLNIK: Do you want to stay on these
14 depositions, Judge? There are others.

15 THE COURT: Okay.

16 MR. SKOLNIK: I mean, for example, Aaron Kassin's
17 father --

18 MR. CROCKETT: We'll withdraw that.

19 THE COURT: Good.

20 MR. SKOLNIK: Eli Dweck, an acquaintance of Aaron
21 Kassin.

22 (Whereupon Counsel confer.)

23 THE COURT: These folks are -- I mean, they're not
24 here and they're not represented at the moment, right?

25 MR. SKOLNIK: As far as I know.

1 THE COURT: So, I mean, I guess we can discuss it.

2 MR. SKOLNIK: Well, I'm bringing it up as a case
3 management issue, Your Honor, because the fact of the matter
4 is, we have a witness who if you want to believe the
5 representations and let's accept them as the subject for the
6 purposes of this discussion, a critical witness, Mr. Kassin,
7 signs an affidavit seven and a half years ago. We are now
8 bumping up to the March 1, you know, etched in stone discovery
9 deadline, and we are looking for depositions of acquaintances
10 of Mr. Kassin and the reason stated is, may have information
11 about Kassin's statements about Ross to counter Kassin's
12 current claims who doesn't remember anything. And the same is
13 given of Melanie Kischk (phonetic).

14 I don't know who exactly that is. And the same is
15 stated as regard to someone named Eli Dweck. So, it's just
16 three more depositions, Your Honor, of people that somehow know Mr.
17 Kassin who are going to be deposed because they may have some
18 information. And I just suggest in terms of the overall
19 scheme of things, Your Honor, and the number of depositions
20 and so forth. With the proper bare bones as that, I suggest
21 that maybe we can do without those few depositions. That's
22 all.

23 MR. CROCKETT: These are three -- the Jack Kischk,
24 Melanie Kischk, and Eli Dweck are three former friends of Mr.
25 Kassin who were affiliated with NXIVM who we have information

1 to believe Mr. Kassin gave -- told them -- had conversations
2 with them about Mr. Ross's attempt to retrieve confidential
3 material. So, these three -- and we only propose actually to
4 take Jack Kischk now and Eli Dweck, only for an hour each.
5 These two will be able to buttress the affidavit that Mr.
6 Kassin has attempted to recant.

7 THE COURT: Discovery is liberal, but it's not
8 without limit. As to Eli Dweck on the statement, on your
9 letter, Mr. Crockett, it says, "He may have information about
10 Kassin's statements." That's, in the context of this case
11 where discovery is so extensive and it's going on for years
12 and years, that kind of a statement is insufficient. And I
13 don't believe it rises to the level of someone that should
14 appear for a deposition, and I think it's in the realm of a
15 fishing expedition. And I would say the same for -- I don't
16 know -- Jack Kischk, is that the other one?

17 Now, if you say you have specific information that
18 hasn't been put before me. And I don't know if you want to
19 attempt to put it before me in some way that he knows
20 something specifically about the issues in this case, but I'm
21 going to start cutting it back. We're not just going to take
22 depositions of people who are friends, or people who knew
23 someone, and --

24 MR. CROCKETT: Very well, Your Honor. I'll cut it
25 off.

1 THE COURT: Yeah, I'm not going to go with that.

2 MR. CROCKETT: I understand. Very well.

3 THE COURT: And that's going to be --

4 MR. CROCKETT: That's would be Eli Dweck, Jack
5 Kischk, and Melanie Kischk.

6 THE COURT: Yeah. Anything else? Anyone else, or
7 -- I think we're getting down to the end of the list here.
8 Okay. I think that's good. Oh, is there more?

9 MR. SYLVESTER: Well no, not on the discovery. It
10 really is more in terms of scheduling. I think it was the
11 last item mentioned in Counsel's letter with regard to, you
12 know, sort of looking ahead, thankfully, to when in fact
13 discovery may be over, and what's the next stage and so forth.
14 And I don't know if Your Honor wants to hear from me, or you
15 just want to --

16 THE COURT: No, I think we should discuss it. I'm
17 going to say this, and I haven't done this yet. I'm going to
18 confer with Judge Cavanaugh as to whether he wants expert
19 discovery before dispositive motions. It would really depend
20 on whether the expert discovery is going to impact it in some
21 way. I don't know what the expert discovery is. I mean, in
22 normal cases we have summary judgment before expert discovery
23 is complete. This might be a case where it's different. I
24 don't know. I haven't gotten much information on that. So,
25 you may want to send in a short letter on each side of your

1 position, because you didn't say much in your letters,
2 Plaintiffs either.

3 MR. SYLVESTER: Okay, Judge. Now, Judge, just to
4 foreshadow what we would say, I think we'd be prepared to file
5 summary judgment motions as quickly as Your Honor would say go
6 ahead and do it, and I think our present intention -- give me
7 a week and I'll put into writing to Your Honor is that the
8 expert issues won't relate to what we're putting in our
9 summary judgment motion.

10 THE COURT: And I understand that. But I guess the
11 Plaintiffs take a different position. And I'm making it very
12 clear that the realm of dispositive motions is for Judge
13 Cavanaugh and I'm going to ask him about it. This is a unique
14 case in the sense of how long it's proceeded and the sense of
15 -- for a million reasons. And I think he should weigh in on
16 that. If he says you do what you think is right, I'll decide
17 it. And if he says, we'll do it this way, we'll do it that
18 way. So, as to that issue I'm going to ask Judge Cavanaugh.

19 MR. SYLVESTER: Thank you.

20 THE COURT: As to scheduling --

21 MR. SKOLNIK: Your Honor, may I ask a question on
22 that point?

23 THE COURT: Sure.

24 MR. SKOLNIK: Would Your Honor prefer that we send
25 letters stating our opinions stating when, if ever, expert

1 discovery should occur, specifically just to Your Honor. Or
2 to Your Honor and Judge Cavanaugh?

3 THE COURT: No, send it to me.

4 MR. SKOLNIK: All right.

5 THE COURT: I'll take it up -- I mean, it's in the
6 realm of what I do, it's just the type of case where I think
7 he should have some say. All right.

8 MALE VOICE: What I want to do is hand up to Your
9 Honor, I had suggested in one of my letters that there was a -
10 - that I was going to request that two exhibits to the Bouchey
11 deposition, Bouchey 3 and 4, be released from confidentiality
12 based upon an in camera review by Your Honor.

13 THE COURT: Right.

14 MALE VOICE: And I would like to hand up copies of
15 Bouchey 3 and 4. And as I said at the time, the law makes it
16 very clear that the burden will be on the proponents of
17 confidentiality -- to explain to Your Honor why these
18 documents and -- are made --

19 THE COURT: Always.

20 MR. CROCKETT: May I see them before they're handed
21 up?

22 MALE VOICE: We don't have a problem with that,
23 Your Honor.

24 MR. CROCKETT: May I see what you're handing up?
25

1 MALE VOICE: The only one we have concern with is
2 3, Your Honor. Okay.

3 MR. SKOLNIK: 3 and 4 are stapled together --

4 MR. CROCKETT: And if I may be heard about this?

5 THE COURT: Sure.

6 MR. CROCKETT: 3 is particularly sensitive because
7 it governs the -- it talks about the internal relationships of
8 NXIVM.

9 THE COURT: Yeah. I just did want to caution you,
10 Mr. Crockett, that we are on the record in open court. So, if
11 you're going to say anything that you want confidential, it's
12 going to be part of the record right now.

13 MR. CROCKETT: I understand.

14 THE COURT: Okay. I just want to remind you.

15 MR. CROCKETT: I understand. So, directing your
16 attention to the first page at the bottom it talks -- it has
17 the heading "pay by function" and then it's got dollar signs
18 in there. And it's got rates and fees and months. Then the
19 second page has formulas. Under field trainer it talks about
20 deductibles and it's got dollar signs and numbers and rates.
21 The third page has a chart, diagrams showing levels and rates
22 and numbers. It refers to a particular index, gross profit
23 information. It talks about percentages. It talks about
24 rates pertaining to that.

25

1 The page which -- the next page which has a 4 on
2 it, contains similar dollar signs and numbers. Page 5 has
3 dollar signs and numbers of rates added up. It identifies the
4 structure. Page 6 is much the same with the same kind of
5 information. Page 7 is much the same with the same kind of
6 information, rates, and commission, and commission charges.
7 Page 8 is even more detailed with the way NXIVM structures
8 itself. It's got a number of students at the top that it
9 discusses. And so, I mean I can go through with this page by
10 page, but they're all very similar in terms of dollars and
11 rates.

12 So, what we're dealing with in this case -- and it
13 also talks about -- Page 13 -- the internal structure, the
14 stripes, the sashes, the colors, and what they mean, and what
15 skills have to be developed at this point in time. And then
16 the last page it's got numerical formulas. What this case is
17 about is again misappropriation of trade secrets and it's
18 talking about that sort of thing. The internal rate structure
19 is highly confidential and shouldn't be made a matter of the
20 public record at this time.

21 MR. MCGUIRE: May I just say something very
22 briefly, Judge?

23 THE COURT: Yes, sure.

24 MR. MCGUIRE: These documents were marked
25 confidential when they were turned over. That mention of

1 confidentiality was also set forth in Ms. Bouchey's deposition
2 transcript. What legitimate purpose would Mr. Skolnik have in
3 mind if these were to be released. He's going to the press.
4 They're released, we'll find them in the Albany Times Union
5 tomorrow. And I defy anybody -- I shouldn't say defy anybody,
6 but that's the only conclusion I can reach.

7 MR. CROCKETT: And let me just add, Your Honor --
8 I'm sorry. Just add -- Mr. McGuire said that I should have
9 said myself, the very reason why I want to see the version
10 that was handed up is because Mr. Skolnik did not hand the
11 Court the version that's marked confidential. In other words,
12 the version we have in our possession has the confidential
13 stamp at the bottom of Exhibit 3. So, we made a conscious
14 decision at some point in time to mark these as confidential.
15 And for some reason the version that was attached to the
16 deposition transcript didn't have that stamp.

17 MALE VOICE: November of 2009.

18 MR. SKOLNIK: Your Honor, I --

19 MR. MCGUIRE: If Your Honor wants to see it I can
20 hand this up.

21 MR. SKOLNIK: I can't speak to that other than
22 telling you that I've given you a copy of that version of this
23 document that was attached to the deposition transcript. But
24 let me address for a moment the arguments that Mr. Crockett
25 and Mr. McGuire made.

1 What I guess is most significant is that virtually
2 every aspect of this document was described during Ms.
3 Bouchey's testimony in detail. And we all now know, I think
4 everybody has accepted, albeit with some reluctance on the
5 other side, that the deposition transcript itself is in the
6 public record, that it was never confidential, and it is
7 hardly confidential now. That deposition transcript describes
8 this document in detail.

9 Now, given that the document is described in detail
10 during testimony that is public, but is it that NXIVM is so
11 desperate to keep the document itself hidden? And I will
12 speculate here, Your Honor, and I will tell you that it's
13 speculation. This document establishes that the way NXIVM
14 operates internally financially is a violation of the general
15 business law of New York that Keith Raniere and Pam Cafritz
16 and Karen Unterreiner are subject to a consent order from the
17 New York State Attorney General.

18 In utter words, what I'm saying, Your Honor, is
19 that this document establishes that NXIVM is run as a version
20 of multi-level marketing scheme in violation of a consent
21 order that Raniere and Keeffe entered into with the New York
22 State Attorney General in connection with Consumers Buyline.
23 There was a big lawsuit, several attorney generals sued
24 Raniere and to settle that lawsuit, he entered into a consent
25 order that he would not operate another organization along

1 certain principals that violated New York general business
2 obligations law.

3 This document, the notes taken about the
4 explanation of the way NXIVM is conducted, I believe
5 demonstrates that NXIVM does precisely that. So, now the
6 question is if the testimony from Barbara Bouchey, which is
7 already public, explains this document, why don't they want
8 the document out there? And I think the answer is, they can
9 simply call her a liar. They can simply say, oh, that's just
10 Barbara bush talking. Show me a document that substantiates
11 this and the very document that would do it, they don't want
12 anybody to see. That's what I think is going here, Your
13 Honor.

14 THE COURT: Are you finished, Mr. Skolnik?

15 MR. SKOLNIK: For the moment.

16 THE COURT: I just have to say that I've never
17 heard any of that at all. It just comes as -- do you know
18 what I'm saying? It's just like a complete -- it's something
19 completely new. But that's fine. I heard what you said.

20 MR. MCGUIRE: Judge, I have two comments today.
21 First of all, Mr. Skolnik's comments today on the record
22 should be under seal, his last speech. He's going to run out
23 of here -- going to be. If there's a transcript, he's going
24 to run to the press. Once more to say defamatory things about
25 NXIVM. That should not be allowed. He did it intentionally.

1 He did not answer the question that I raised, what purpose
2 does it have. The closest he came is, he wants to get this
3 published. That's not a reason. It was marked confidential
4 from the get-go. It was marked confidential at Ms. Bouchey's
5 deposition and he should not be allowed to run to the press
6 once more with this. I guarantee you, that if this is allowed
7 to be treated as non-confidential, this will be in the Albany
8 Times within days.

9 MR. SKOLNIK: Your Honor, I'm getting very tired
10 offering allegations that I run to the press. I have not run
11 to the press once during this litigation. The only lawyer in
12 this room who has ever been quoted in the press from something
13 other than a file document is Bob Crockett. Okay? I have not
14 run to the press once.

15 There is a confidentiality order on this case that
16 allows any party to ask that any document be released from a
17 designation of confidentiality. That's what is going on here.
18 They designated it confidential and pursuant to the
19 confidentiality order, I am making an application that it not
20 be treated as confidential and it burden is on them to explain
21 why it should be.

22 THE COURT: But Mr. Skolnik, you did just say that
23 they want to say that someone is a liar, for example, and that
24 you need to go out there and use this document to prove it not
25 so. If this document remains confidential, it can still be

1 used in this case. So, I can understand why someone might
2 interpret your statements as saying, you know, that you had
3 some other concern other than use in this case. So, I don't
4 know about that.

5 MR. SKOLNIK: Your Honor, what I'm really saying is
6 that this document is of the nature of a document that NXIVM
7 devoted to secrecy, does not want to see the light of day in
8 any context. I don't have to take this to the press. New
9 York state investigators might very well be very interested in
10 this document. All kinds of people might be interested in the
11 document. And what I'm saying is, given the public interest
12 and given the potential legal issues that surround this
13 document, I don't think it behooves this Court to stamp this
14 with confidentiality. I think that this document is -- the
15 public interest. I think that it is against public policy,
16 and I think that this Court's should not place its -- on
17 continuing to keep this document under seal.

18 THE COURT: Well, I mean, once again, none of this
19 was laid out in your letter, or anywhere else. So, I don't
20 know about that, one. In other words, that there's an order
21 and consent orders, or anything like that. So, I'm not even
22 going to consider that.

23 Two, maybe what you say is true, but those are
24 issues that may yet to be decided in this, or another
25 litigation. I can't make that judgment right now. I am

1 prepared to decide this. And the dispute apparently seems to
2 be over this one document that was an exhibit in the October
3 29th deposition of Ms. Bouchey. And I think these documents
4 were marked -- this document was marked confidential.

5 At some point the transcript of the deposition was
6 placed in a public manner, but never the exhibits. And as I
7 understand it, this deposition and these exhibits have been
8 out there -- or this exhibit has been out there, marked
9 confidential for a long time. And at this point to Mr.
10 Skolnik, I take it the Ross -- your client has challenged,
11 although, quite belatedly -- the confidentiality of this
12 document. Perhaps because the transcript was recently filed
13 in New York.

14 But the filing of the transcript in New York does
15 nothing to affect the confidentiality designation of the
16 document. It's clear that under the umbrella protective order
17 entered in this case, you are permitted to challenge the
18 confidentiality of the document. And it is the burden of the
19 designator, NXIVM parties, to show the confidentiality
20 documents as warranted involved the good cause standard under
21 Pansy and that line of cases. And this was not done in
22 writing, because it was just handed up now.

23 But I think that Mr. Crockett did set forth a
24 sufficient basis to establish good cause that this document
25 remained confidential at this time. The document seems to be

1 the type of document that in a normal case would receive
2 confidentiality. In other words, it has pricing information.
3 It has descriptions of the internal structures and practices.
4 It has what NXIVM claims is trade secret protected
5 information. That may be determined otherwise at another
6 time. But as I look at the document itself, it does seem --
7 although, it's a little difficult to understand, it's a
8 handwritten document, it seems to have a description of NXIVM
9 and how they do business, et cetera.

10 And while I understand, given the feelings of the
11 parties in this cases, well, why your client may believe this
12 should be public, at this stage it is a document that is sort
13 of the classic type of document that is to be kept
14 confidential.

15 Now, if there's some other reason, some legitimate
16 reason -- and I don't know, first of all you have ethical
17 constraints about what counsel can do with documents when
18 you're in a civil litigation, I don't know about that. I
19 don't know if there is a reporting requirement on anyone
20 pursuant to this consent order. These are things that no one
21 has even mentioned.

22 I'm satisfied that what I heard from Mr. Crockett
23 right now is really a classic confidential-type document. In
24 other words, it trade secret, pricing, structure, strategy,
25 that kind of thing. That is what the rule and the law allows

1 to be protected. And I suppose to put your argument in the
2 best light it's against the public interest on some level,
3 which is one of the Pansy factors to be determined. But
4 there's no way to make that determination at that point.
5 Those issues are still very much in dispute, maybe not even in
6 this case, maybe in the New York consent order case. It's not
7 something here. I'm going to maintain the confidentiality
8 designation of the document.

9 I think I do need to get to what Mr. McGwire said,
10 and that is -- Mr. McGwire said that certain things that you
11 said in open court on the record should be sealed. And I
12 don't know how strongly the Plaintiffs feel about that.
13 Certainly that the entire transcript shouldn't be sealed. We
14 have a transcript policy ever since the advent of electronic
15 filing. We have a transcript rule that prevents the parties
16 from -- prevents the Court from placing on the docket any
17 transcript for a certain amount of time.

18 It's a local rule, and the purpose of it is, if
19 during a proceeding, someone blurts out something like a
20 personal identifier, or something that shouldn't be public, a
21 party has a chance to request to redact the transcript. I
22 have recently written an opinion. Let's see -- I think it's
23 called Pfeizer against Teva (phonetic) -- isn't it, Justin --
24 addressing this very issue. And the thrust of the opinion,
25 just so you're all clear, is that if you know something is

1 going to be discussed, you should ask to seal the courtroom or
2 raise the issue before it's said on the record.

3 In this case it was something that apparently was
4 said by Mr. Skolnik that Mr. McGwire did not know was going to
5 be on the docket. So, it will remain sealed pursuant to the
6 transcript redaction policy at this point. And Justin says
7 we'll give you the cite to this case if you need it. I don't
8 know how strongly you feel. But if you wish to seal that
9 aspect of the transcript, local rule 5.3 does require a formal
10 motion to seal and it should be limited to the lines. The
11 parties with, you know, get it, but -- so, I don't know what
12 you want to do with that. But --

13 MR. MCGUIRE: But in the meantime I would ask Your
14 Honor to issue a verbal ruling that those comments may not be
15 released to anybody and even the motion, and we will file that
16 motion.

17 THE COURT: Okay. I think you should be, or try to
18 be clear about what comments you're talking about for us to --

19 MR. MCGUIRE: Yes, I will.

20 THE COURT: So, I think that should -- yeah, I
21 think you should have --

22 MR. MCGUIRE: Well, the reason I'm -- I don't want
23 somebody to walk out and -- I'm not suggesting that Mr.
24 Skolnik does this directly. I don't know, but somebody is
25 calling. It's either somebody on behalf of Mr. Ross, or on

1 behalf of him. These things get in the newspaper almost
2 immediately. And that's what I'm trying to prevent here. And
3 so I hope Your Honor is giving the message that this is not to
4 be disclosed to the public or to anybody else other than the
5 people in this room, and Ms. Bouchey should be bound by that
6 as well.

7 THE COURT: Well, I am. I mean, the concept would be
8 that if it was something that -- I mean, if we assumed that
9 your motion is granted, that would be tantamount to closing
10 the courtroom so that anyone here, I think it's legitimate.
11 I've kind of taken the lead on this issue. And yes, I don't
12 think it should be disseminated to anyone until this motion is
13 decided. But it should be clearly identified what we're
14 talking about and I think it should be as narrow as possible.

15 MR. MCGUIRE: Yes, Judge. Thank you.

16 MR. SKOLNIK: Your Honor, I simply want to reiterate
17 that I have made no extra-judicial comments in this case and
18 will not. And I am circling back to the very first thing that
19 you said at the beginning of this hearing, Your Honor. I
20 understood all of those comments to be addressed to extra-
21 judicial comments. And I, in fact --

22 THE COURT: But not just to you, Mr. Skolnik. Not to
23 you at all.

24 MR. SKOLNIK: All right. Well, I appreciate that.

25 THE COURT: Just to everyone here.

1 MR. SKOLNIK: And I want to make it clear on the
2 record that I have made no extra-judicial comments whatsoever.
3 And the materials that Mr. McGuire was talking about earlier
4 were not extra-judicial. The materials that he was
5 complaining about at the top of this hearing were attached to
6 judicial documents, documents that had been filed in the case.
7 As I say, the only lawyer on this case in this room who has
8 ever made comments to the press outside of the judicial
9 context is Mr. Crockett. It is not Mr. Skolnik.

10 THE COURT: Yeah. Well, let's be clear, I don't know
11 who has, who hasn't. There is no blanket prohibition doing
12 so. Everyone should be guided by the ethical rules and by the
13 case law that I mentioned. So, I'm not saying anything is
14 proper or improper. The case, just in case you want to refer
15 to it in terms of the transcript -- in other words, after the
16 fact sealing of a transcript is reported at 2010 Westlaw
17 2710566. I don't know that it's really necessary for your
18 application, but I do address the interplay of our transcript
19 redaction policy and deal with the idea of things that are
20 blurted out in court that weren't intended to be, usually
21 things like personal identifiers. Now --

22 MR. MCGUIRE: Thank you, Judge. Judge, there's one
23 thing I neglected.

24 THE COURT: Okay.

25 MR. MCGUIRE: That was one of our motions.

1 THE COURT: Okay.

2 MR. MCGUIRE: It has to do with the interrogatories
3 to the Ross Defendants that they had refused to answer.

4 THE COURT: Oh, okay.

5 MR. MCGUIRE: Mr. Landy did answer the
6 interrogatories. Mr. Kauffman asked for, and I granted, an
7 extension of time to answer those interrogatories. I think he
8 has until today. That's my recollection. It's only Mr. Ross
9 who's objecting. And I'm prepared to argue. I don't see how
10 those interrogatories cannot be addressed.

11 THE COURT: Which ones?

12 MR. MCGUIRE: I'm sorry, Judge?

13 THE COURT: I'm just trying to get --

14 MR. MCGUIRE: It's my letter of December 2, Judge.

15 THE COURT: Oh, okay. Yes, yes. I know what you're
16 talking about now. Okay, yes. Yeah, I read this stuff.

17 MR. MCGUIRE: And those interrogatories are clearly
18 relevant. There's no reason they shouldn't be answered. Mr.
19 Skolnik went on the blog, if I'm using the right term, and
20 asked people to call him concerning information relating
21 essentially to confidentiality of materials. He's the only
22 source of that information and we addressed this to his client
23 -- in the definitions, your attorneys, or anybody else.
24 There's no other way for us to get that. So, we need that
25 information. And the other interrogatories are clear on their

1 face. I don't think any argument is required, but if Mr.
2 Skolnik wants to say something about them, I'll respond.

3 But they're clearly relevant and should be answered.
4 For him to state that written discovery closed in October of
5 whatever year it was, Your Honor has extended that for good
6 cause on a number of occasions. He's raised that argument all
7 the time. I thought we were beyond it, but apparently we're
8 not. But all these issues came up after that date, in any
9 event.

10 THE COURT: Mr. Skolnik, did -- I mean, I think Mr.
11 McGuire has a point, but I didn't hear any opposition.

12 MR. SKOLNIK: Yeah, Your Honor, the first
13 interrogatory cites my one blog posting, which basically asked
14 for people to contact me if they had certain kinds of
15 information. Unlike the lawyers on that side, I don't have
16 private investigators who could work for me. I try to get my
17 information the way I can. And this was one easy way of doing
18 it.

19 I think that in fairness the interrogatory calls for
20 my attorney work product, because they are asking about the
21 responses that I received to a posting that I made on the
22 blog. Okay? So, I think it goes to the way I am developing
23 my case. Having said that, I will represent to Your Honor and
24 to them that I have had no responses whatsoever to that
25 posting. So, that's the answer to Interrogatory #1. There

1 have been none.

2 Interrogatory #2 goes to a facility in -- a document
3 storage facility about which Ross has never been involved.
4 This was a debate that went on between Kristin Keeffe and Jim
5 Bolavive (phonetic). He has absolutely no information about
6 it, and for NXIVM to be doing a fishing expedition with Rick
7 Ross about this at this point I think is not the kind of issue
8 that deserves an exception to the longstanding rule that
9 written discovery in this case closed in 2009.

10 Then there are three others. Number 5 you have
11 already, in effect, ruled on. Number 5 asks for Ross to
12 identify all conversations or communications that he or anyone
13 on his behalf have had with former employees, members, or
14 students of NXIVM since the inception of this litigation. You
15 have already ruled that all of that, all of those
16 communications from the families who have desperately
17 communicated with Ross trying to get their kids out of NXIVM,
18 all of that has nothing to do with the underlying claims left
19 in this case. So that interrogatory on its face flies in the
20 face of one of your prior rulings.

21 The other two interrogatories as for all of Ross's
22 communications with Barbara Bouchey and Susan Dones, which
23 again could not conceivably relate, even if there were such
24 communications and I make no representations that there were.
25 Ms. Bouchey said to you a moment ago that she's never met Mr.

1 Ross. She's never spoken to Mr. Ross. She's never dealt with
2 Mr. Ross.

3 But the fact is that I'm less concerned about the fact
4 that these requests are in fact so out of time, but that they
5 are clearly looking for information that is simply not
6 relevant to this lawsuit. This is NXIVM trying to find out
7 what its perceived entities are saying to one another. And it
8 is not relevant to the way that they are going to litigate
9 this case. It's just from their paranoid desire to know
10 everything bad that anybody is saying about them. So, they
11 asked for e-mails between A and B and C and D that took place
12 yesterday that they had no conceivable relevance to this case.
13 And that's why I declined to answer these interrogatories.

14 THE COURT: Well, I guess as to the first issue I
15 think that was a very creative indication of a work product,
16 Mr. Skolnik. I don't think that's work product protected at
17 all. In other words, that's like asking for eye witnesses to
18 -- you could make that analogy in any event.

19 MR. SKOLNIK: Well, that's why I backed off, Your
20 Honor.

21 THE COURT: No, I understand. So, certainly that
22 answer should be given, but I think you've stated in open
23 court that you got no responses. I hope that would be
24 satisfactory to the Plaintiffs. And if you get any responses,
25 it should be produced. No?

1 MR. MCGUIRE: That's fine by me, Judge. All I heard
2 here is that he's getting answers now that should have been
3 given back then. I've gotten no responses. That would have
4 been a simple answer.

5 THE COURT: Right.

6 MR. MCGUIRE: I couldn't object to that.

7 THE COURT: Right.

8 MR. MCGUIRE: These are five simple interrogatories,
9 all of which were formed as a result of some testimony. There
10 was testimony by Mr. Aviv claiming that NXIVM had another
11 document depository. I think it was allegedly in
12 Massachusetts. I hope I'm not misstating that. Mr. Landy has
13 answered that. Mr. Kofman is going to answer that. I want to
14 know whether any party has any knowledge of that. Let him say
15 in the interrogatory, we have no information. That's fine,
16 but it's an appropriate question. I don't want to be hit at
17 trial with the fact that somebody is aware of some depository
18 in Rhode Island or Massachusetts that we didn't describe.
19 That's what the purpose of that interrogatory was.

20 But when you get to 3, Mr. Skolnik is not the
21 attorney for Ms. Bouchey. He's been in frequent conversations
22 with her, I take it from some of the e-mails I have seen. And
23 I think we're entitled to know. That's not privileged. What
24 is he talking to Ms. Bouchey about?

25 MR. SKOLNIK: Why?

1 MR. MCGUIRE: What is she saying to him?

2 MR. SKOLNIK: Why?

3 MR. MCGUIRE: Why?

4 MR. SKOLNIK: Why, Your Honor, are they entitled to
5 know that? What relevance does it have to this lawsuit?

6 MR. MCGUIRE: We're asking about communications
7 concerning this lawsuit that you've had with Ms. Bouchey.
8 She's not your client.

9 (Whereupon Counsel confer.)

10 MR. SKOLNIK: That's not what the interrogatory asked
11 for, Your Honor.

12 THE COURT: Well, I think certainly a -- well, Number
13 2 should be answer, first of all. I think information about
14 document depositories is standard information. I don't -- it
15 is late. I will agree with you there, Mr. Skolnik. But a lot
16 of things are happening late here. Three, I think should be
17 answered, but I think it should have the qualification that
18 Mr. McGuire just added, related to this lawsuit. No reason
19 not to. Four, I guess -- I'm not sure about Susan. Who is
20 Susan Dones? I know she wrote these notes, but who --

21 MR. MCGUIRE: She's a nonparty, not represented by
22 Mr. Skolnik -- excuse me. Apparently she gave some testimony
23 about NXIVM. As I understand Mr. Crockett can address this
24 more --

25 MR. CROCKETT: Your Honor, Susan Dones stole

1 confidential information from NXIVM and released it on the
2 internet. We obtained -- we took her deposition and we had a
3 trial before a bankruptcy judge in the western district of
4 Washington that spanned a day. And he issued a preliminary
5 injunction. It was a trial for a preliminary injunction. He
6 issued a preliminary injunction against her further
7 disseminating NXIVM's materials.

8 Susan Dones has been in contact repeatedly with Ms.
9 Bouchey. Susan Dones testified at trial that she has been
10 guided and instructed the entire way by Mr. Skolnik and that
11 they had a system of concealing their communications by using
12 text messages on phones and then deleting them instantly. In
13 her deposition when I asked her to produce the text messages
14 that she received from Mr. Skolnik that day, before her
15 deposition she opened up her e-mail -- her phone and deleted
16 them in front of me.

17 So, what's happening here is that there is this three
18 way relationship between Mr. Skolnik, Ms. Dones, who has been
19 enjoined and at least on a preliminary basis, found guilty of
20 disseminating NXIVM materials, and Ms. Bouchey. And they're
21 all working together and communicating together on this topic.
22 And so the reason why it's relevant is that we have Mr. Ross's
23 footprints in assisting others in disseminating stolen
24 material on the internet.

25 MR. SKOLNIK: Your Honor, I stand here as a First

1 Amendment lawyer who really has a visceral reaction on the
2 defense side of defamation cases. And I'm saying to myself, I
3 wish that Mr. Crockett could be sued in defamation for the
4 kinds of statements that he is making here. To say that Susan
5 Dones stole material is defamatory. It is simply defamatory.
6 He just makes a lot of the stuff that you just heard up.

7 And I am in no position to do anything to quote
8 chapter and verse to deny it, because I don't have a
9 transcript, and neither does he, in front of him. He says
10 things like, they have been in constant communications. They
11 communicate through secret text messages. It is all you know,
12 being made up on the fly. It sounds very good, because he
13 stands there and quietly pontificates about this stuff, but it
14 is all nonsense, Your Honor. It is all nonsense.

15 And I really wish that people in a position to sue
16 him for the statements that he makes in this open court were
17 able to do that.

18 MR. MCGUIRE: Are you finished, Mr. Skolnik?

19 MR. SKOLNIK: I'm not sure that I'm finished, Bill.

20 MR. MCGUIRE: Well, I'll sit down. I'm sorry. Your
21 Honor --

22 MR. SKOLNIK: The interrogatories and document
23 demands that are at issue here about Bouchey and Dones call
24 for all communications that Mr. Ross, or anyone acting on his
25 behalf have had with either of these women. I will tell you

1 that to the extent that I have had any communications with
2 either Ms. Bouchey, or Ms. Dones, it has not been on Rick
3 Ross's behalf.

4 If I have done some pro bono advising of people who
5 are also being sued by NXIVM in separate litigations, that is
6 not a communication that is relevant to this litigation. It
7 has nothing to do with the claims in this case. Mr. Ross --
8 neither Mr. Ross or anyone acting on his behalf have had any
9 such communications. Mr. Ross and Ms. Dones as far as I know,
10 have never met, have never spoken, have never communicated.

11 To the extent that I have given Ms. Dones some advice
12 on how to fight some of the egregious tactics that NXIVM
13 employs against her, I do that because I want to do it. I
14 don't do it for Mr. Ross. I do it because I think that it is
15 the right thing to do. That has been the case with my
16 occasional help to Ms. Bouchey, including trying to locate a
17 lawyer to represent her. I do that because they are being
18 badly mistreated, constantly by these lawyers and by the
19 members of NXIVM. And I do it because I think it is the right
20 thing to do. I don't do it for Mr. Ross and my communications
21 are not on his behalf.

22 I am happy to put in an answer that says exactly
23 that, but the answer to all of these will be "nothing". There
24 is nothing. There are no such communications. There are no
25 such documents, because there are not made by Mr. Ross or on

1 Mr. Ross's behalf. And I repeat, Your Honor, that Number 5
2 you have already rejected.

3 THE COURT: Well, I think -- let me just say -- well,
4 let me hear from the other side first. Go ahead Mr. McGuire.

5 MR. MCGUIRE: First of all, Judge, we will supply
6 you with a transcript of Ms. Dones' deposition so that you can
7 determine whether or not they have been misrepresented.

8 MR. SKOLNIK: It's already filed.

9 MR. MCGUIRE: as well as the Court's order.

10 THE COURT: Okay.

11 MR. MCGUIRE: if Mr. Crockett -- excuse me. If Mr.
12 Skolnik is texting or speaking with Ms. Dones, about issues
13 involving NXIVM unrelated to the bankruptcy matter out there,
14 we're entitled to know that. She is not his attorney. He's
15 giving her advice. We're entitled to see those text messages.
16 Ms. Dones apparently destroyed them in the presence of the --
17 I don't know in the presence of the Court or not -- in the
18 presence of Mr. Crockett. So, we apparently can't get them
19 from her. The only source is from Mr. Skolnik, who is not her
20 attorney. And if there is information in those e-mails or
21 text messages, anything of the sort, telephone conversations,
22 relating to the issues in this case, we're entitled to know
23 that.

24 THE COURT: I'm trying to get my arms around this
25 one, I mean, apart from all the emotion involved, which I

1 understand. I guess to the extent that it relates to this
2 case, it should be answered. And to the extent that it -- to
3 the extent that it's a general question, it should not be
4 answered. I think you just answered it Mr. Skolnik, didn't
5 you?

6 MR. SKOLNIK: I think I did --

7 THE COURT: I don't know if that's satisfactory to
8 the -- I mean, you're just presenting this to me now and it's
9 hard to --

10 MR. MCGUIRE: I understand.

11 THE COURT: -- to really understand what's going on.

12 MR. MCGUIRE: Perhaps Your Honor will have a better
13 idea of what this is about if we send you the transcript --

14 THE COURT: Yeah, frankly --

15 MR. MCGUIRE: -- of the deposition.

16 THE COURT: -- if you want to do that, I'll address
17 it further. I don't think it's ultimately going to be
18 terribly probative in this case.

19 MR. MCGUIRE: It may or it may not, Judge.

20 THE COURT: I mean, that's my gut feeling. I don't
21 know if you want to spend your time doing it. But if you do,
22 I'll read it and do my best.

23 MR. MCGUIRE: And even if these messages are given to
24 you in camera, I have no problem with that either, so Your
25 Honor can make a determination.

1 THE COURT: But Mr. Skolnik basically said there were
2 no messages.

3 MR. MCGUIRE: Well, I don't think he said that.

4 THE COURT: No, he said there's not that were on --
5 either Rick Ross or on behalf of Rick Ross. That's what the
6 question --

7 MR. MCGUIRE: He did say that. He did say that.

8 THE COURT: Right.

9 MR. MCGUIRE: But if there were communications --
10 let's just say a communication goes out -- I'm speculating at
11 this. Susan answered his question about a conversation you
12 had with Barbara Bouchey, or a conversation you had with Nancy
13 Salzman, this is the way you should answer that. That's why I
14 say, submit them in camera to Your Honor. But there were
15 messages as I understand Mr. Crockett's story today, to and
16 from. And they should be presented to you for an in camera
17 review. If Your Honor decides they have nothing to do with
18 the issues in this case, I'll abide by that.

19 THE COURT: That's really what I'm trying to figure
20 out is what do they have to do with the issues in this case.

21 MR. MCGUIRE: You'll only know if you read them,
22 Judge.

23 MR. CROCKETT: Well, Your Honor, it's certainly --
24 the communications Mr. Skolnik is having with Barbara Bouchey
25 are very important, because it goes to corruption issues,

1 which we're entitled to raise at trial. I mean, what's he
2 doing spending so much time with Barbara Bouchey and
3 transmitting information to her about the way she should
4 respond to NXIVM's requests and subpoenas and documents. I
5 mean --

6 THE COURT: In this case, or in some other case?

7 MR. CROCKETT: Yes, in this case. In this case.
8 What is she -- why is he communicating with Barbara Bouchey
9 about how to respond to the motion to compel her deposition,
10 how to respond to the documents that are being requested of
11 her? I mean, again, we don't want to call her as a witness,
12 but what on earth is Mr. Skolnik doing spending so much time
13 and effort coaching her on the way she should respond to our
14 subpoena requests? I mean, that's classic corruption. Now, I
15 --

16 THE COURT: Well, corruption is a strong word.

17 MR. CROCKETT: No, corruption is a term used --

18 THE COURT: Yeah, I understand.

19 MR. CROCKETT: I'm not saying it's a criminal
20 corruption.

21 THE COURT: Right.

22 MR. CROCKETT: It's a term of art used to describe
23 interfering with witness' ability to present testimony in an
24 uncorrupted fashion. I mean, I'm not accusing him of a crime
25 or anything like that. I'm just saying that Mr. Skolnik

1 should stay out of the fray and not try and induce Ms. Bouchey
2 to respond in a particular way to our subpoena requests. And
3 to the extent that he is, I mean, we'd like to see what those
4 communications are. And if the word "corruption" is used, I'm
5 sorry. I withdraw it and say "interfere."

6 MS. BOUCHEY: Your Honor, I don't know if I'm allowed
7 to speak to this. I'm surprised that they're both talking
8 about me. And you know, to be frank about it, Mr. Crockett is
9 making a lot of this up. And in view -- meaning. I'm pro se
10 in this. I can't afford an attorney. I have had some
11 occasional communication via e-mail, because I'm trying to
12 understand the process. You know, certain scheduling dates;
13 you know, certain subpoena things -- so, it's really pretty
14 much process. And I've been at this now for two years. So, I
15 pretty much know, what's okay to say, what's not okay to say.
16 I really adhere to my own strict caution.

17 I very rarely ever speak to Susan Dones and haven't
18 for about eight months now. I mean, so Mr. Crockett is making
19 a lot of assumptions and also he has made a lot of defamatory
20 remarks about me. Mr. McGuire has as well. There has been
21 lots of things said about me that are untrue here in this
22 courtroom, and I just have to sit here silently and listen to
23 it all. And the reality is none of this is true. And I have
24 no problem producing whatever I have with Mr. Skolnik, but I
25 assure you that it's pretty much process and pretty boring,

1 and it isn't what you think that it is.

2 THE COURT: All right. I appreciate that, Ms.
3 Bouchey. Folks, if you want to send me a less than five page
4 letter supplementing on these issues, I'll take it under
5 advisement. I just don't know what else to say right now. I
6 think we've reached the end of our discovery issues, haven't
7 we? There's one final question.

8 MR. SKOLNIK: There's a deadline issue.

9 THE COURT: The deadline. That's the question. The
10 idea -- you know, I set it was set in stone 16 times. I spoke
11 with Judge Cavanaugh beforehand. We've had some rough
12 weather. The idea is not to open it up and you can see I'm
13 not going to allow lots of new subpoenas or anything like
14 that, but what's -- I'm told that the machine is about to go
15 off. It goes off every one and a half -- hour and a half.
16 What are your thoughts on the deadline? Our deadline is March
17 1. We have a bit of stuff to do before then.

18 MR. SYLVESTER: As a practical matter, Your Honor,
19 unless something extraordinary happens, why don't we live with
20 whoever remains to be deposed, I would like to stay as close
21 to March 1 as -- I mean, we'll do our best, but I understand.
22 We have notice -- we could lose another few days between now
23 and March 1st. But I think what we should do is stick with
24 what we have, get it done. It sounds like we may have a
25 deposition March 10th in any event, but you know, we want to

1 stay as close to it as possible, but we understand we have
2 lost probably at least six or seven days due to weather.

3 THE COURT: Anyone want to say anything else?

4 MR. MCGUIRE: Judge --

5 THE COURT: Sure, Mr. McGuire.

6 MR. MCGUIRE: I think we've got five or six
7 depositions out there other than Ms. Bouchey. We'll make
8 every effort to complete them by March 1. But I think that
9 even if we're going to go to Albany, the Judge has set a date
10 of March 9, but I would think if there were to be extended for
11 a couple of weeks, that's all. We'd be able to finish.

12 THE COURT: I'm going to extend discovery to April
13 15th. I want you to know that before I did this I spoke to
14 Judge Cavanaugh. He said that it could be extended up to 60
15 days, no more. I think that's practical. I'm expecting --
16 I've said it a million times, so it's like crying wolf, but I
17 really expect this to be it. I want to -- I'll give you a
18 chance in a minute, Mr. Skolnik. I want -- a couple of things
19 I just want to remember. One, if you want to give me further
20 letters on those interrogatories, which I don't think are
21 terribly significant given what I've heard. I just don't
22 think that's the case. Two, if you want to give me short
23 letters on each side -- and it's up to you -- on the issue of
24 whether to have expert discovery prior to dispositive motion
25 practice, that would be a good idea. And finally, before I

1 hear from Mr. Skolnik or anyone else, I think you should --
2 Mr. McGuire, I think you might want to let Ms. Bouchey know --
3 and perhaps actually all the Counsel -- what they're not to
4 discuss with anyone about that sealing issue. Do you know
5 what I'm trying to say?

6 MR. MCGUIRE: Yes, Your Honor. But I --

7 THE COURT: Okay. Go ahead.

8 MR. MCGUIRE: I feel uncomfortable talking to Ms.
9 Bouchey directly.

10 THE COURT: Oh so, do you want to do it --

11 MS. BOUCHEY: I don't talk about it anyway.

12 MR. MCGUIRE: I will accept that representation so
13 long as Ms. Bouchey understands that the remarks made by Mr.
14 Skolnik are not to be disseminated to anyone pending Your
15 Honor's ruling on our motion.

16 MS. BOUCHEY: Although my transcript is public
17 domain.

18 MR. MCGUIRE: I'm not talking about the transcript.

19 THE COURT: No, no. This is something that was said
20 here when we were discussing --

21 MS. BOUCHEY: Oh, that -- oh, about the -- oh yeah,
22 sure. I --

23 THE COURT: Yeah, when we were discussing a certain
24 issue and we can say the issue -- that would be part of what
25 would be sealed if you want to put it on the record. I just

1 want to make sure everyone knows so that no -- now, Mr.
2 Skolnik?

3 MR. SKOLNIK: Your Honor, I was just going to say I
4 was a little surprised that you said April 15th given that Mr.
5 McGuire had just said that he thought that we only needed
6 another couple of weeks. Mr. Sylvester has said that he
7 thought that it would probably be doable pretty close to March
8 1. I certainly think given the number of depositions that
9 have now been cleared away, it could also be done pretty close
10 to March 1. I don't know why we need until April 15th.

11 THE COURT: Well --

12 MR. SKOLNIK: This is going to be one of those
13 things. If the time is there it's going to be used. And I
14 think you could say March 15th and if there's some big
15 exception that we have to apply for then so be it.

16 THE COURT: Well --

17 MR. MCGUIRE: Did Ms. Keeffe have 90 days, Your
18 Honor?

19 (Laughter.)

20 MR. SKOLNIK: Yeah, exactly. What is --

21 THE COURT: I hear you, Mr. Skolnik. It's a
22 legitimate point. But I must say that part of it has to do
23 with my own schedule. I have to attend certain committee
24 meetings in Washington. I'm going to be out and I think as a
25 practical matter, that couple of weeks will make no difference

1 in when this gets decided. So, I appreciate your comments and
2 there's merit to them, but I'm using my discretion having
3 chatted with Judge Cavanaugh, knowing his schedule. And I'm
4 going to make it April 15th as the final date. Okay?

5 MR. SKOLNIK: Final point of clarification, Your
6 Honor.

7 THE COURT: Yes.

8 MR. SKOLNIK: Your Honor indicated that at some point
9 during the morning that you might be in touch with the judge
10 or the magistrate judge of the northern district, which might
11 shed some resolution to how we go about finalizing a
12 deposition date for Ms. Bouchey. I mean, I would be delighted
13 if everybody could get together today, now, and decide okay,
14 Judge -- said one day, it can be in New Jersey, let's pick the
15 date and do it. I am pessimistic that the lawyers on the
16 other side of the room will agree to that. So, I want to know
17 how we go about deciding how that's going to play out.

18 THE COURT: Well, I'm going to again strongly urge
19 that you do it. It makes more sense for everyone. If you
20 don't want to do it, I'll decide what my next step is. In
21 other words, I may decide after I go back and don't have a lot
22 of things to deal with here and a lot of paper to read. I may
23 decide that I'll just issue a protective order myself and let
24 the chips fall where they may. I may decide to call the
25 magistrate or the judge, whoever issued this order. I haven't

1 even seen it. So, I'm sorry I can't give you a better answer.

2 MR. SKOLNIK: Okay. Thank you, Your Honor.

3 MS. BOUCHEY: And just one more variable with that,
4 too -- a hearing in --

5 THE COURT: Just speak up a little bit.

6 MS. BOUCHEY: Yes, the attorney that I located is
7 only going to come for the day of the deposition, but he will
8 not come if it's up in Albany, because that's not just coming
9 and helping me out with a deposition. That turns into
10 overnight, getting up there. So, if that factors in, it's
11 really important to me to have someone with me when I'm
12 deposed and I want to come down here to do that. And I would
13 rather be here so you can interject. That's just my two
14 cents.

15 THE COURT: Okay. I appreciate that.

16 MR. MCGUIRE: No, Judge, I'm just saying that my
17 preliminary idea is, we made the motion in the northern
18 district of New York knowing that we were going to have
19 problems with this deposition.

20 THE COURT: Right.

21 MR. MCGUIRE: And that's the only place that has
22 jurisdiction over this lady right now. And that's my chief
23 concern. I think we ought to take it up there, because I
24 anticipate problems. I hope I'm wrong, but I anticipate
25 problems and I'm not sure you will have jurisdiction over Ms.

1 Bouchey here. So, I want to do it up in Albany where there's
2 no doubt about the question of jurisdiction. That's where she
3 lives. That's where she resides.

4 THE COURT: Well, it's where the subpoena is issued.
5 But I'm also told there was -- I'm not -- you do what you have
6 to do, but I was also told that she issued a deposition --
7 that there was a deposition subpoena issued out of New Jersey
8 as well, one. And two, Ms. Bouchey I think could consent to
9 the jurisdiction here.

10 MR. CROCKETT: Will she? Ask her -- could the Court
11 ask her if she's willing to submit to jurisdiction of this
12 Court?

13 THE COURT: Will you be willing --

14 MS. BOUCHEY: I am requesting to be here and to have
15 --

16 THE COURT: And to submit to the jurisdictions that I
17 would have the -- in other words, that this Court has the
18 power to enforce the subpoena?

19 MS. BOUCHEY: Yes.

20 THE COURT: And if you violated it, to hold you in
21 contempt? I'm not trying to scare you or threaten you, but
22 I'm trying to --

23 MS. BOUCHEY: Yes. Right.

24 THE COURT: -- you understand what's involved with
25 the --

1 MS. BOUCHEY: Your Honor, my preference is to have it
2 be here, because I feel that you know more about it than the
3 --

4 MR. CROCKETT: Could we have an affirmation from her
5 that she agrees with what the Court just said?

6 MR. SKOLNIK: She just started to put that on the
7 record.

8 MS. BOUCHEY: How many times do I need to say it?

9 MR. CROCKETT: Well, she's saying other things than
10 saying I agree to be bound by the jurisdiction of this Court.

11 THE COURT: Right.

12 MS. BOUCHEY: What I understand is that you have
13 offered to allow my deposition to take place here, that you
14 would be available to interject on the records that have been
15 subpoenaed, the appropriateness of them, and that you would be
16 available.

17 THE COURT: Yeah, I'm not going to be part of it. If
18 there's a dispute I will be available and that could be
19 brought to me.

20 MS. BOUCHEY: Right.

21 MR. MCGUIRE: But does she --

22 THE COURT: Do you agree to -- are you consenting to
23 the jurisdiction of this Court for the purposes of your
24 deposition in this case?

25 MS. BOUCHEY: Yes.

1 THE COURT: And everything that goes with that?

2 MS. BOUCHEY: Yes.

3 MR. MCGUIRE: Judge, I feel a little uncomfortable.
4 Until today I thought based on emails that Ms. Bouchee was
5 unrepresented. She has sent me an email. I have responded to
6 her. If she's represented by counsel I'd like to know who he
7 is, because --

8 MS. BOUCHEY: I'm not represented by counsel.

9 MR. MCGUIRE: I thought you --

10 MS. BOUCHEY: I have someone who has offered to do
11 pro bono for whenever the day of the deposition is. That's
12 it.

13 THE COURT: Do you want to tell us who that is, Ms.
14 Bouchee? I don't know if I can force you to do that, but do
15 you want to tell us who that is?

16 MS. BOUCHEY: No, my preference is not to. The
17 person may not decide to do it, and the person has offered to
18 do it.

19 MR. MCGUIRE: Judge, I don't like this whole thing.

20 MS. BOUCHEY: If it's contingent on that, then I will
21 reveal it. Listen, Your Honor, I have had a history with
22 these people and I hate to say this, but I've been
23 intimidated, harassed, there's been private investigators that
24 have stalked me, stalked my friend. This is outrageous. I
25 spent \$300,000 in legal fees in the last 20 months. This is

1 getting out of control. And the only argument that I have
2 here is that you're asking for inappropriate records, I'm
3 asking for help. That's it. And I feel that I might have
4 more help here than any place else. And I have someone who
5 has volunteered their time to help me, because I don't want to
6 be alone in a deposition with NXIVM attorneys. There's
7 nothing gray about this, nothing at all.

8 MR. MCGUIRE: See, the problem is, Judge, I don't
9 want to deal with a pro se if there's an attorney involved.
10 I'd much rather deal with the attorney who understands the
11 law. With all due respect to Ms. Bouchehey, she's not a lawyer.
12 I got a letter from her -- I don't know -- Thursday or Friday,
13 a very well written letter. If you were to look at that
14 letter, Judge, you'd say that's written by a lawyer.

15 MS. BOUCHEY: No, I wrote it. Thank you --

16 MR. MCGUIRE: I understand you signed it.

17 MS. BOUCHEY: I wrote it.

18 MR. MCGUIRE: I don't want get involved in colloquy,
19 Ms. Bouchehey, but if there's an attorney --

20 THE COURT: Okay --

21 MR. SKOLNIK: No, you just want to call her a liar.

22 MR. MCGUIRE: I didn't say that.

23 THE COURT: Please.

24 MR. MCGUIRE: I didn't say anything near that and you
25 know it. But Judge, I'd rather deal with an attorney. If

1 there is an attorney, I don't want to be writing back and
2 forth to Ms. Bouchey.

3 THE COURT: All right. Mr. McGuire, I'm not forcing
4 you, or Ms. Bouchey, or Mr. Skolnik, or anyone else to do
5 anything with respect to that issue. I may take unilateral
6 action and we'll see where the chips fall. So, I understand
7 your position and we'll see what happens.

8 MR. MCGUIRE: Thank you, Judge.

9 THE COURT: Okay. Thank you all.

10 MR. LANDY: Your Honor, we --

11 THE COURT: Oh, there's something else?

12 MR. LANDY: Yeah, I know we've been here for some
13 number of hours and I beg the Court's indulgence and the
14 others assembled here for me to just -- there are two
15 observations that I think should be made and then I will
16 follow them up with two requests concerning the April 15th
17 deadline.

18 THE COURT: Okay.

19 MR. LANDY: The first observation that I would note
20 is that a number of times over the course of these past hours
21 we've heard the statement that this is a case about the theft
22 of trade secrets, which I agree with.

23 THE COURT: Part of it.

24 MR. LANDY: There are other issues in the case, but
25 the disputes that have been going on supposedly come from

1 that. I represent a client whose claims -- and it stands now
2 in the position only as a cross-claim plaintiff, not a
3 defendant in the action, because that has been settled --
4 whose claims are comprised of a contractual claim for
5 indemnification for legal fees arising out of this proceeding.
6 And the extension of discovery for us, or for my client is
7 very, very burdensome. And this leads -- there's just a point
8 that I'd like to make, the second observation is that --

9 THE COURT: Go ahead.

10 MR. LANDY: Your Honor, what we've seen today is that
11 there is an obvious ongoing relationship, albeit a very
12 contemptuous relationship, between Mr. Ross and the NXIVM
13 parties. They're not fond of each other, but they continue to
14 be involved in each other's lives. And discovery in this case
15 seems to have become a bit of a snake eating its tail.

16 We're arguing about whether we should have discovery
17 in a case that was filed in 2003 about events that happened
18 six months ago. And continuing on this path, discovery could
19 continue on forever. So, what -- two requests that I would
20 like to pose to the Court that would try to make the April
21 15th deadline stick.

22 The first request is, can we have a date by which all
23 disputes much be brought before the Court. That is, at some
24 point in advance of the 15th -- so we know that come the 15th
25 we know what we're supposed to get done and we get it done or

1 we choose simply not to do it. And then the second request
2 would be, can we limit the remainder of discovery to requests
3 that are now outstanding.

4 THE COURT: Okay. I sort of thought we -- the
5 disputes that we had already. I thought this was it,
6 actually. There's going to be more disputes?

7 MR. LANDY: If today is that deadline I would be very
8 happy.

9 THE COURT: No, I didn't make it a deadline, but I
10 guess that's what I was thinking at this point. I didn't
11 think we'd have too many more disputes. Yes, Mr. McGuire?

12 MR. MCGUIRE: Just very briefly, Judge. I don't know
13 what's going to happen with the remaining five, six, or seven
14 depositions. If something comes up in those depositions which
15 requires an interrogatory, another deposition, an application
16 will be made. But I can't commit today to say regardless of
17 what happens, today is it. There will be no more discovery.
18 I don't know what's going to happen in these remaining
19 depositions.

20 THE COURT: Well, certainly disputes should be raised
21 before April 15th. Actually, disputes should be raised
22 immediately. So, that's -- you know --

23 MR. LANDY: Your Honor, I anticipate that from these
24 additional depositions there will be additional disputes. And
25 I was heartened to hear multiple counsel say that they thought

1 that what we had on the schedule might be able to be taken
2 care of within a week or two after March 1st, which would
3 enable us to say by March 15th have everything that we have on
4 the schedule now complete, and raise any disputes that came
5 from that little bit of remaining discovery before the court
6 so that we could get the Court's guidance and then finish by
7 the 15th for real.

8 THE COURT: Well, you raise a good point. I'm going
9 to leave it standing the way it is and rely on the good faith
10 of Counsel to get things done. So, you know, I'm not looking
11 for major new discovery to be -- right now. As Mr. McGuire
12 says, there may be a couple of follow up things. So, that's
13 my comment. Do you have another request?

14 MR. LANDY: No, that was the two of them.

15 THE COURT: That was it? And you represent Juval
16 Aviv?

17 MR. LANDY: And Interfor, Inc.

18 THE COURT: Interfor, I see. Okay. Are we done?
19 Thank you.

20

21 (Whereupon, at 1:56 p.m. the proceeding was concluded.)

22

23

24

25

CERTIFICATE

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.

S/ Amanda S. Maher

February 11, 2011

Signature of Assigned Transcriber

Date

Amanda S. Maher Assigned Transcriber
King Transcription Services
65 Willowbrook Boulevard
Wayne, NJ 07470
(973) 237-6080